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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,939	01/04/2002	Robert M. Fitzgerald	13965-043	8500
28786 7590 11/10/2008 LAW OFFICE OF CHAD C. SOLIZ, LLC 407 N. Lincoln Ave. Ste. 105 LOVELAND, CO 80537				
EXAMINER				
JACKSON, BLANE J				
ART UNIT		PAPER NUMBER		
2618				
MAIL DATE		DELIVERY MODE		
11/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/038,939

Applicant(s)

FITZGERALD, ROBERT M.

Examiner

BLANE J. JACKSON

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 6, 7, 12, 15, 17-19, 21, 23-25, 27, 31-33, 35, 37, 39, 42, 43, 47, 51, 52, 54, 60-63 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1-3,6,7,12,15,17-19,21,23-25,27,31-33,35,37,39,42,43,47,51,52,54 and 60-63.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 23 September 2008 have been fully considered but they are not persuasive. The applicant primarily argues that the earpiece mounting of the headset of prior art O'Malley does not allow the headset from rotating in both a left and right direction when on the head of a user to a hand held configuration.

O'Malley teaches the headset is intended to be used as a headset or handset, "Figure 11 illustrates the headset, as in figure 1, with earpiece assembly (12) together with the boom (16), pivoted in its stirrup so that the earpiece assembly can be held in a hand and positioned against an ear without the headband being over the users head. The transmitter housing (17) will be correctly positioned close to the user's mouth and the headset can be used in the same manner as a conventional handset. *This is obtained by the particular orientation of the pivot axis*", column 4, lines 54-62.

With respect to the capability of the transmitter or earpiece assembly with boom to rotate in both directions as referenced from the head worn position, O'Malley teaches in the Summary of the Invention, "The earpiece is mounted on the pivot members to pivot about an axis generally in the plane of the headband or parallel to that plane being capable of pivoting for about 120 degrees for the earpiece with a boom and about 150 degrees for the other earpiece". This distinction of rotation between the earpieces with and without the boom suggests the rotation direction without the boom gains 30 degrees. Upon inspection of figures 1, 3 and especially figure 8, it appears the boom

assembly as attached to the earpiece provides the primary restriction in rotation as shown in figure 8 which is about 90 degrees from the head worn configuration. Consequently, given a total rotation range of about 120 degrees, the earpiece with the boom assembly is *capable of about 30 degrees rotation in the opposite direction*. The examiner interprets this rotation in the opposite direction of about 30 degrees is sufficient to define a second hand held or handset position.

In view of this opinion, the Office Action filed 01 July 2008 is repeated below where the claim element comments are edited for clarity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7, 12, 15, 19, 21, 23-25, 35, 37, 39, 42, 43, 47, 52, 54, 61 and 63 rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 4,634,816) in view of Mack, II et al. (US Patent 5,991,637).

As to claims 1 and 63, O'Malley teaches a *telephone headset* system and method of configuring a cordless telephone headset system for use comprising:

A headband having two distal ends (figure 1, column 2, lines 1-23 and column 4, line 63 to column 5, line 5, a wired headset with headband (10) and with or without the second earpiece to be plugged into a telephone set),

A telephone control having a speaker (figures 1 and 3, column 2, lines 1-43, speaker or receiver (31) within earpiece (12)),

A rotatable connection of said headband with said telephone control at a distal end of said headband, said rotatable connection on a vertical axis of said headband and telephone control at said distal end of said headband wherein said telephone control and said headband are rotatable about said vertical axis to a hand worn configuration and a hand held configuration (figures 1 and 11, column 1, lines 15-38 and column 4, lines 54-62, the mounting of an earpiece enables pivoting of the earpiece such that it can be held against an ear without the headband being on the users head),

A microphone connected with said telephone control (figures 3 and 10, column 2, lines 1-15 and column 5, lines 6-22, boom (16) connecting microphone assembly (17) to earpiece assembly (12)),

Wherein said headband is rotatable in both a left and right rotation in a head worn configuration on the head of a user about said vertical axis to a hand held configuration (figures 1, 3 and 11, column 1, lines 15-38, the earpiece with boom is shown rotated in a first direction with respect to the headworn position of about 90 degrees which suggests the earpiece with boom may rotate at least 30 degrees in the opposite direction given the assembly is capable of about 120 degrees total rotation and

the boom assembly provides the primary restriction to further rotation in either direction).

O'Malley teaches a wired headset comprising an earpiece with a speaker and boom microphone but does not teach a wireless telephone headset comprising a telephone control having a speaker and telephone call control.

Mack teaches a wireless telephone headset system comprising a dial/ control panel (504) and display (506) to manage telephone calls and a boom microphone (210) mounted to the earpiece, figures 2, 6, 8a, 8b and 11, column 4, line 61 to column 5, line 15 and column 8, lines 33-59. Mack also teaches a folding head strap (206) which uses hinges (1102) or swivels mounted in the head band adjacent the earpiece communications assembly to fold the headset into a compact folded position for storage, figure 11, column 9, lines 23-30.

Since Mack teaches a headset system with a swivel headband and features similar to O'Malley, it would have been obvious to one of ordinary skill in the art at the time of the invention to upgrade the headset system of O'Malley with the wireless and call control features of Mack for the convenience of the user.

As to claim 2, Mack of O'Malley modified teaches a wireless telephone headset system as described in claim 1 wherein the telephone control comprises a dial pad (figure 8a, column 8, lines 33-37, control panel buttons (802) used to dial a phone number).

As to claims 3 and 42 with respect to claims 1 and 37, O'Malley teaches the telephone control and said headband are rotatable less than 180 degrees of rotation (figure 11, column 1, lines 15-3, about 120 degrees for the earpiece with microphone boom).

Claims 4 and 5 cancelled.

As to claim 6 with respect to claim 2, Mack of O'Malley modified teaches an earpiece adjacent the one of the distal ends of the headband wherein the dial pad is transversely adjacent the earpiece (figure 8a and 8b, dial pad (802) opposite earpiece (202), and to identify the headset speakers or earpiece (202): column 3, lines 47-60).

As to claim 7 with respect to claim 1, Mack of O'Malley modified teaches a microphone boom having two distal ends wherein the microphone is positioned adjacent one of the distal ends of the boom and wherein a second distal end of the microphone boom is pivotally connected to the phone control (figure 8b, column 8, lines 41-47, microphone boom (210)).

Claims 8-11 are cancelled.

As to claim 12 with respect to claim 7, O'Malley teaches the microphone boom is configured to accommodate both a user left ear configuration and a user right ear

configuration (figures 1 and 3, column 1, lines 26-31 and column 5, lines 6-13, boom can be positioned for either side of the head of the user).

Claims 13 and 14 are cancelled.

As to claims 15 and 21 with respect to claims 12 and 1, O'Malley teaches the telephone control and said headband are configured to accommodate both a user left ear configuration and a user right ear configuration (figure 11, column 5, lines 6-13).

Claim 16 is cancelled.

As to claim 19 with respect to claim 2, Mack of O'Malley modified teaches the key pad comprises a plurality of input elements (figure 5, 8a, column 6, lines 3-12, operator control panel (504) for telephone or radio control).

Claims 20 and 22 are cancelled.

As to claim 23 with respect to claim 21, O'Malley teaches the telephone control and said headband are rotatable to accommodate a user configuration within a corresponding rotation of zero to 90 degrees (figure 11, column 1, lines 15-38, earpiece is mounted on a pivot member to pivot about an axis generally in the plane of the headband being capable of pivoting for about 120 degrees).

As to claim 24 with respect to claim 1, O'Malley teaches the telephone control and said headband are rotatable to accommodate an aligned configuration of said telephone control with said headband and a plurality of offset configurations of said telephone control with said headband (figure 11, column 1, lines 33-38).

As to claim 25 with respect to claim 1, Mack of O'Malley modified teaches a portable wireless portable telephone/ radio with control circuitry and an optional motorized antenna (figure 6) but does not specifically disclose a headset comprising a power source comprises a battery fixedly connected to the second distal end of the headband. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to necessarily include a battery in the system of Mack of O'Malley modified to source a portable radio type device.

Claims 26, 28-30 and 34 are cancelled.

As to claims 35 and 37, O'Malley teaches *a telephone headset* and method of configuring a cordless telephone headset system for use comprising:

A headband having two distal ends (figure 1, column 2, lines 1-23 and column 4, line 63 to column 5, line 5, a wired headset with headband (10) and with or without the second earpiece to be plugged into a telephone set),

A telephone control having a speaker (figures 1 and 3, column 2, lines 1-43, speaker or receiver (31) within earpiece (12)),

A rotatable connection of said headband with said telephone control at a distal end of said headband, said rotatable connection on a vertical axis of said headband and telephone control at said distal end of said headband wherein said telephone control and said headband are rotatable about said vertical axis to a head worn configuration and a hand held configuration (figures 1 and 11, column 1, lines 15-38 and column 4, lines 54-62, the mounting of an earpiece enables pivoting of the earpiece such that it can be held against an ear without the headband being on the users head),

A microphone connected with said telephone control (figures 3 and 10, column 2, lines 1-15 and column 5, lines 6-22, boom (16) connecting microphone (17) to earpiece assembly (12)),

Wherein said headband and said telephone control are each rotatable about said vertical axis to a head worn configuration of said headband and said telephone control and to a hand held configuration of said headband and said telephone control in both a left or right rotation (figures 1 and 11, column 1, lines 15-38, earpiece can be held against an ear without the headband being on the users head).

O'Malley teaches a wired headset comprising an earpiece with a speaker and boom microphone but does not teach a wireless telephone headset comprising a telephone control having a speaker and telephone call control.

Mack teaches a wireless telephone headset system comprising a dial/ control panel (504) and display (506) to manage telephone calls and a boom microphone (210)

mounted to the earpiece, figures 2, 6, 8a, 8b and 11, column 4, line 61 to column 5, line 15 and column 8, lines 33-59. Mack also teaches a folding head strap (206) which uses hinges (1102) or swivels mounted in the head band adjacent the earpiece communications assembly to fold the headset into a compact folded position for storage, figure 11, column 9, lines 23-30.

Since Mack teaches a headset system with a swivel headband and features similar to O'Malley, it would have been obvious to one of ordinary skill in the art at the time of the invention to upgrade the headset system of O'Malley with the wireless and call control features of Mack for the convenience of the user.

O'Malley teaches the telephone control and the headband are rotatable in about 120 degrees of rotation about the vertical axis but does not specifically indicate rotation in 180 degrees of rotation, figure 11, column 1, lines 15-38 and column 4, lines 54-62. However, since O'Malley teaches *about 120 degrees* of rotation for the purpose of pivoting of the earpiece such that the headset may be used as a headset or handset, it would have been obvious to one of ordinary skill in the art at the time of the invention to alternatively configure the relationship of the earpiece and pivot mechanism of O'Malley to accommodate more than the about 120 degrees of rotation to ensure the head band may be rotated clear of the head for the headset to be used as a handset..

Claims 36, 38, 40, 41, 44-46 and 48-50 are cancelled.

As to claims 39, with respect to claim 37, Mack of O'Malley modified teaches the step of configuring the microphone comprises rotating said microphone (figures 8a and 8b, column 8, lines 41-49, microphone boom (210)).

As to claim 42 with respect to claim 37, O'Malley teaches wherein said step of rotating comprises rotating to a user configuration less than 180 degrees of rotation (figure 11, column 1, lines 15-38).

As to claim 43 with respect to claim 37, O'Malley teaches the telephone control and said headband are rotatable less than 360 degrees of rotation (figure 11, column 1, lines 15-3, about 120 degrees for the earpiece with microphone boom).

As to claims 47 and 52 with respect to claim 37, O'Malley of Mack modified teaches the step of configuring the microphone comprises configuring a microphone boom of said wireless telephone headset system to accommodate a user left ear configuration and a user right ear configuration (figures 3 and 9, column 5, lines 6-13).

Claim 53 is cancelled.

As to claim 54 with respect to claim 52, O'Malley of Mack modified teaches the step of rotating comprises rotating zero to at least 90 degrees (figure 11, column 1, lines 15-38, about 120 degrees of rotation).

Claims 55-59 are cancelled.

As to claim 61 with respect to claim 37, Mack of O'Malley modified teaches the step of providing computer capability to the cordless telephone system (figure 5, controller (502), column 6, lines 3-12).

Claims 64-67 are cancelled.

Claims 17, 18 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 4,634,816) and Mack, II et al. (U.S. Patent 5,991,637) and further in view of Magnasco et al. (U.S. Patent 6,016,347).

As to claims 17, 18 with respect to claim 7 and claim 51 with respect to claim 37, Mack of O'Malley modified teaches the microphone is rotated down to switch the wireless telephone to the in use or off hook condition (column 8, lines 41-49) but does not teach the microphone boom comprises a mute switch.

Magnasco teaches a headset where the rotated boom position signals the telephone control for standby mute or talk modes (figure 2, column 3, lines 25-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the microphone boom switch of Mack of O'Malley modified to include the additional telephone control modes of Magnasco for further convenience to the user of the telephone functions.

Claims 27, 31, 32 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley and Mack, II et al. (U.S. Patent 5,991,637) in view of Silver (U.S. Patent 4,882,745).

As to claims 27 and 31 with respect to claims 1, Mack of O'Malley modified teaches a headset and a method of configuring a cordless telephone headset to be used with a base station, column 3, lines 23-46, but do not teach a base correspondingly configured to a substantially upright orientation of the headband and the telephone control.

Silver teaches a cordless headset telephone system comprising a headset and cradle or base, the base configured with a receptacle corresponding to at least a portion of the telephone control and at least a portion of a second distal end of the headband and the base receptacle is configured to hold the headband and the telephone control in a substantially upright position, figure 3 and 6, column 5, lines 6-29 and column 7, lines 36-50.

Since Silver also teaches the cradle having charging contacts for the headset battery (column 1, lines 27-41), it would have been obvious to one of ordinary skill in the art at the time of the invention to identify in the base station of Mack of O'Malley modified the headset cradle of Silver so as to make the headset available to the user in a convenient manner and to provide positive positioning of the headset for connection and charging of the headset battery.

As to claim 32 with respect to claim 27, Mack of O'Malley modified teaches telephonic control circuitry responsive to telephone control and said base wherein said telephone control comprises at least a portion of said telephonic control circuitry (figure 5, column 6, line 3 to column 7, line 17, controller (502) handles call control).

As to claim 60 with respect to claim 37, Mack of O'Malley modified teaches a controller (502) to manage call control and to display status information such as current radio frequency, telephone number, signal strength and battery status, column 6, lines 3-12 but does not teach a method of configuring a cordless telephone headset system comprising the step of charging a power source positioned adjacent a second distal end of the headband.

Silver teaches two battery charging contacts disposed on the headset to connect to the base when the headset is at rest on the headset cradle (column 4, lines 1-15).

Even though Silver does not specify the specific location of the charging contacts, it would have been obvious to one of ordinary skill at the time of the invention to modify Mack modified with the charging contacts of Silver placed where the headset comes in contact with the base in the storage position.

Claims 33 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 4,634,816), Mack, II et al. (U.S. Patent 5,991,637) and Silver (U.S. Patent 4,882,745). and further in view of Babitch et al. (U.S. Patent 5,930,719).

As to claims 33 and 62 with respect to claim 27 and 61, O'Malley modified teaches a telephone headset system with a base station but does not teach the base is configured for computer compatibility.

Babitch teaches a cordless handset system where the base station includes a connection to the wireless handset, telephone network and modem communication with a desktop computer (figure 1, column 2, line 65 to column 3, line 30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the headset telephone system of O'Malley modified with the advantages of a computer connection as taught by Babitch for the functionality of a diction system from headset to the desktop computer or the functionality of an audio e-mail center.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLANE J. JACKSON whose telephone number is (571)272-7890. The examiner can normally be reached on Monday through Thursday, 8:30 AM-7:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blane J Jackson/
Examiner, Art Unit 2618